

First Supplement to Memorandum 93-28

Subject: F-1001 — Family Code Cleanup Bill (AB 1500)

The Family Code cleanup bill (AB 1500) was approved by the Assembly Judiciary Committee on April 21, after a number of amendments were made to meet potential opposition. (A copy of the amendments is attached as Exhibit 1; a copy of AB 1500 as introduced is also attached for Commissioners.) Also attached as Exhibit 2 is a table showing the disposition of last year's family law legislation in AB 1500.

Domestic Violence Amendments

Several amendments were made to meet objections of the California Alliance Against Domestic Violence (CAADV). These amendments were accepted in accordance with the Commission's policy in this study of restoring existing law, to the extent practicable, where there is an objection to a redrafted provision in the Family Code. Assembly Bill 1500 proposed to bring some degree of consistency to the domestic violence statutes by adopting the Family Code definition of "domestic violence" generally in the Penal Code and elsewhere. This issue was fully considered by the Commission at the September and October 1992 meetings and the January 1993 meeting. (See, e.g., the tentative recommendation *Reorganization of Domestic Violence Provisions*.)

The CAADV was concerned with three instances of incorporating the Family Code definition — in Penal Code Sections 1000.6 and 13700 and Welfare and Institutions Code Section 18291. Amendments were made to return these provisions to existing law. The loss of these provisions from the package dealt a serious blow to the consistency argument, which was the foundation of these revisions. Accordingly, the bill was amended to restore the language of Penal Code sections as to domestic violence. In other words, the justification for tinkering with domestic violence sections generally — achieving a minimal level of consistency in the definition of "domestic violence" — was lost in the process of meeting the objection and that part of the domestic violence recommendation had to be abandoned. However, the staff believes that this effort has been beneficial since the research and presentation of the issue has focused some attention on the confusion and inconsistency in existing law. The subject would be appropriate for interim

study by a special legislative committee that could work with all of the interested persons and that would have the authority to make important substantive revisions where appropriate.

Ex Parte Visitation Orders

The CAADV also objected to Family Code Section 6323 which generalized the rule on ex parte issuance of visitation orders. As with the domestic violence provisions, since we faced an objection to a change in the existing statute, the bill was amended to return to the existing confused state of the law. This was not easy since the interested parties have different interpretations of the existing law. The following revision ultimately proved acceptable:

§ 6323. Determining temporary custody and visitation

6323. Subject to Section 3064 ,the :

(a) ~~The~~ court may issue an ex parte order determining the temporary custody of a minor child ~~and the right of a party to visit the child on the conditions the court determines.~~

(b) The court may issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding commenced under this division in the case of a marital relationship between the parties.

The purpose of this language is to return to the substance of the law under the first sentence of existing Code of Civil Procedure Section 546(a). As with the domestic violence revisions, reform of this area of the law will be left to another time.

Penal Code Firearms Provisions

Concerns of a legislative staffer about conflicts with a number of other bills revision Penal Code sections concerning firearms have been met by subordinating the conforming revisions in AB 1500 to any revisions made by any other bill affecting Penal Code Sections 12021, 12028.5, 12031, 12070, 12076, and 12078.

Respectfully submitted,

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Assistant Executive Secretary

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EXHIBIT 1

AMENDMENTS TO ASSEMBLY BILL 1500

Title Amendment 1

Strike out line 67 of the title and insert:
Sections 273.5, 273.6, 360, 977,

Title Amendment 2

In line 68 of the title, strike out "1000.6,"

Title Amendment 3

In line 69 of the title, strike out "13700,"

Title Amendment 4

In lines 73 and 74 of the title, strike out ", and to repeal and add
Section 18291 of,"

Fam. Code § 2045 Amendment 5

On page 147, line 1, strike out "restraining"

Fam. Code § 3687 Amendment 6

On page 187, line 14, strike out "all" and insert:
All

Fam. Code § 4059 Amendment 7

On page 201, line 1, strike out "subdivision (b)" and insert:
paragraph (2) of subdivision (a)

Fam. Code § 6323

Amendment 8

On page 222, line 33, strike out “3064, the” and insert:
3064:

(a) The

Fam. Code § 6323

Amendment 9

On page 222, line 35, strike out “and the right of a party to visit the child”

Fam. Code § 6323

Amendment 10

On page 222, between lines 36 and 37, insert:

(b) The court may issue an ex parte order determining the right of a party to visit a minor child on the conditions the court determines in a proceeding for dissolution of marriage, nullity of marriage, or legal separation of the parties, in an action under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), or in a proceeding commenced under this division in the case of a marital relationship between the parties.

Fam. Code § 7710

Amendment 11

On page 240, line 38, strike out “restraining”

Gov’t. Code § 68085

Amendment 12

On page 283, line 37, strike out “1” and insert:
1)

Penal Code § 136.2

Amendment 13

On page 288, strike out lines 25 to 40, inclusive, strike out page 289, and on page 290, strike out lines 1 to 4, inclusive

Penal Code § 273.83 & 277

Amendment 14

On page 294, strike out lines 11 to 40, inclusive, strike out page 295, and on page 296, strike out lines 1 to 4, inclusive

Penal Code § 653m & 853.6

Amendment 15

On page 296, strike out lines 26 to 40, inclusive, strike out pages 297 to 302, inclusive, and on page 303, strike out lines 1 to 12, inclusive

Penal Code § 1000.6

Amendment 16

On page 305, strike out lines 13 to 40, inclusive, and on page 306, strike out lines 1 to 24, inclusive

Penal Code § 11170

Amendment 17

On page 313, line 15, strike out “9.5.” and insert:

9.5

Penal Code § 12028.5

Amendment 18

On page 317, strike out lines 9 to 28, inclusive, and in line 29, strike out “(1)” and insert:

12028.5. (a) As used in this section, the following definitions shall apply:

(1) “Abuse” means intentionally or recklessly causing or attempting to cause bodily injury, or placing another person in reasonable apprehension of imminent serious bodily injury to himself, herself, or another.

(2) “Family violence” has the same meaning as domestic violence as defined in subdivision (b) of Section 13700, and also includes any abuse perpetrated against a family or household member.

(3) “Family or household member” means a spouse, former spouse, parent, child, any person related by consanguinity or affinity within the second degree, or any person who regularly resides or who regularly resided in the household.

The presumption applies that the male parent is the father of any child of the female pursuant to the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12 of the Family Code).

(4)

LRC Staff Note. This amendment, along with the following four amendments, restores the language of the existing section and corrects a cross reference that was chaptered out in 1992.

Penal Code § 12028.5

Amendment 19

On page 317, strike out lines 32 and 33

Penal Code § 12028.5

Amendment 20

On page 318, line 5, strike out “domestic” and insert:
family

Penal Code § 12028.5

Amendment 21

On page 318, line 23, strike out “domestic” and insert:
family

Penal Code § 12028.5

Amendment 22

On page 319, line 37, strike out “domestic” and insert:
family

Penal Code § 13700

Amendment 23

On page 342, strike out lines 16 to 40, inclusive, and on page 343, strike out line 1

W&I Code § 18291 & Bill § 236

Amendment 24

On page 374, strike out lines 27 to 40, inclusive, and on page 375, strike out lines 1 to 3, inclusive, and insert:

SEC. 235. Any section of any act enacted by the Legislature during the 1993 calendar year, which takes effect on or before January 1, 1994, and which amends, amends and renumbers, repeals and adds, or repeals Section 12021, 12028.5, 12031, 12070, 12076, or 12078 of the Penal Code, shall prevail over the amendment of that section by this act, whether that act is chaptered before or after this act.

W&I Code § 18291 fragment

Amendment 25

On page 375, lines 17 and 18, strike out “provided in Section 6211 of the Family Code.”

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EXHIBIT 2

**AB 1500 (FAMILY CODE TECHNICAL REVISIONS)
DISPOSITION OF SECTIONS TO BE REPEALED**

This table shows the disposition of 1992 family law legislation in the Civil Code, Code of Civil Procedure, and Evidence Code that would be repealed by Assembly Bill 1500 (Speier). The Law Revision Commission’s intent in preparing this legislation is to carry 1992 family law provisions into the new Family Code (operative January 1, 1994) without making substantive revisions.

- The first column lists sections added or amended in the 1992 legislative session that need to be repealed and included in the new Family Code.
- The second column gives the citation to 1992 California Statutes for each listed section.
- The third column indicates the proposed disposition in the Family Code. This column includes only the sections of the Family Code relevant to the new language added in 1992 that requires cleanup changes in this bill. For disposition of parts of repealed sections that did not require cleanup changes, see the Disposition Table in the *Family Code Report*, 22 Cal. L. Revision Comm’n Reports 1, 799-814 (1992).

<i>Section To Be Repealed</i>	<i>Source in 1992 Legislation</i>	<i>Disposition in the Family Code</i>
Civil Code	1992 Cal. Stat.	Family Code
25.9	ch. 252, § 1	6924 (amended) (consent by minor to mental health treatment, counseling, or residential shelter services)
64	ch. 821, § 1	7120-7121 (amended) (petition for & notice of declaration of emancipation)
65	ch. 821, § 2	7132-7133 (amended) (petition for & notice of rescission of declaration of emancipation)
196.5	ch. 718, § 1	3901 (amended) (duration of child support duty)
220.15	ch. 1353, § 1.5	8620 (added) (purpose of adoption)
220.20	ch. 1353, § 2	8502 (added) (“adoption service provider” defined) 8539 (added) (“place for adoption” defined) 8543 (added) (“qualified court investigator” defined) [ch. 472, § 1] 8801 (amended) (selection of prospective adoptive parents)
221.05	ch. 1353, § 3	8621 (added) (regulations)
221.07	ch. 1353, § 4	8622 (added) (notice of service limitations)
222.10	ch. 667, § 1	8700 (amended) (relinquishment of child to department or licensed adoption agency)
222.71	ch. 455, § 1	8714 (amended) (adoption petition and order)

<i>Section To Be Repealed</i>	<i>Source in 1992 Legislation</i>	<i>Disposition in the Family Code</i>
Civil Code	1992 Cal. Stat.	Family Code
224.21	ch. 1353, § 5	8801.3 (added) (placement for adoption)
224.24	ch. 1353, § 6	8801.5 (added) (duties of adoption service provider)
224.26	ch. 1353, § 7	8801.7 (added) (duties of adoption service provider)
224.30	ch. 1353, § 8	8802 (amended) (adoption petition and order)
224.36	ch. 1353, § 9	8804 (amended) (notice to department of motion to withdraw or dismiss petition)
224.44	ch. 1353, § 10	8808 (amended) (interview by department or agency)
224.62	ch. 1353, § 11	8814 (amended) (consent of birth parents to adoption)
224.63	ch. 1353, § 12	8814.5 (added) (revocation and waiver)
224.64	ch. 1353, § 13	8815 (repealed & added) (consent irrevocable)
226.23	ch. 435, § 1	8904 (amended) (agency services for adoptions finalized in foreign country)
226.69	ch. 435, § 2	8919 (added) (readoption)
227.20	ch. 472, § 2	9001 (amended) (investigation)
227.30	ch. 472, § 3	9002 (amended) (cost of investigation)
227.40	ch. 472, § 4	9003 (amended) (consent of birth parents to adoption)
227.46	ch. 472, § 5	9005 (amended) (motion or petition to withdraw consent)
227.50	ch. 472, § 6	9006 (amended) (notice of withdrawal or dismissal)
233	ch. 472, § 7	7850-7851 (amended) (investigation, report, and recommendation regarding circumstances of child) 7852 (added) (“qualified court investigator” defined)
4100	ch. 318, § 1	300 (amended) (marriage relation)
4200	ch. 318, § 2	306 (amended) (procedural requirements)
4202	ch. 318, § 3	359 (amended) (certificate of registry)
4203	ch. 318, § 4	360 (amended) (replacement of lost certificate of registry)
4204	ch. 318, § 5	357 (amended) (duties of county clerk and county recorder)
4206	ch. 318, § 6	420 (amended) (essential element of solemnization)
4208	ch. 318, § 7	422 (amended) (statement of person solemnizing marriage) 423 (amended) (return of license and statement to local registrar)
4210	ch. 318, § 8	425 (amended) (unrecorded marriage)

<i>Section To Be Repealed</i>	<i>Source in 1992 Legislation</i>	<i>Disposition in the Family Code</i>
Civil Code	1992 Cal. Stat.	Family Code
4213	ch. 318, § 9	506(c) (amended) (preparation and filing of marriage certificate) 510 (amended) (replacement of lost certificate)
4216	ch. 318, § 10	307 (amended) (requirements for marriage of members of religious society or denomination)
4357.5	ch. 848, § 1	3621-3622 (amended) (ex parte order for child support during pendency of action)
4359	ch. 1136, § 1	6305 (added) (conditions for issuance of mutual order)
4370.5	ch. 356, § 1	2032 (added) (award to be just and reasonable)
4372	ch. 356, § 2	2033 (added) (family law attorney's real property lien)
4373	ch. 356, § 3	2034 (added) (objection to family law attorney's real property lien)
4384.5	ch. 718, § 3	4502 (repealed & added) (exceptions from renewal requirement)
4390	ch. 848, § 2	5206 (amended) ("earnings" defined)
4390.3	ch. 848, § 3	5260 (amended) (finding of good cause required to stay order)
4395	ch. 1157, § 1	3830 (added) (software used to determine support)
4602	ch. 427, § 14	No change to Family Code required, because no change made in 1992 bill.
4612	ch. 1136, § 2	3031 (added) (custody order not to be inconsistent with civil or criminal protective orders)
4700.11	ch. 50, § 2	4729 (amended) (utilization of penalties by district attorney) 4733 (added) (payment of penalties to custodian)
4702	ch. 848, § 4	4201 (amended) (child support payable to person having custody of minor child)
4720	ch. 848, § 5	4050-4054 (added) (statewide uniform guideline)
4721	ch. 848, § 6	4055-4069 (added) (statewide uniform guideline)
4722	ch. 848, § 7	4070-4073 (added) (statewide uniform guideline)
4760-4793	ch. 411, § 2	20000-20043 (added) (family law pilot projects)
4800.6	ch. 159, § 1	2628 (repealed) (notice in petition and judgment) 2024 (amended) (notice concerning effect of petition and judgment on will, insurance, and other matters)
4800.8	ch. 431, § 1	2610 (amended) (division of retirement plan benefits)
4800.10	ch. 356, § 4	2100-2109 (added) (disclosure of assets and liabilities)
4800.11	ch. 356, § 5	2120-2129 (added) (relief from judgment)
4801	ch. 427, § 15	No change to Family Code required, due to original redrafting of section.

<i>Section To Be Repealed</i>	<i>Source in 1992 Legislation</i>	<i>Disposition in the Family Code</i>
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Civil Code	1992 Cal. Stat.	Family Code
5110.740	ch. 51, § 1	853 (amended) (estate planning documents)
5127	ch. 356, § 6	1102 (amended) (management and control of community real property)
5152	ch. 392, § 1	3403 (amended) (jurisdiction requirements)
5157	ch. 392, § 2	3408 (amended) (jurisdiction declined by reason of conduct)
5158	ch. 392, § 3	3409 (amended) (information to be provided by court)
7004	ch. 849, § 1.5	7611 (amended) (presumption of paternity) 7611.5 (added) (prohibition on presumption of paternity) 7612 (amended) (nature of paternity presumptions)
7009	ch. 1136, § 3	3031 (added) (custody order not to be inconsistent with civil or criminal protective orders)
7020	ch. 1136, § 4	6305 (added) (conditions for issuance of mutual order)

Code of Civil Procedure	1992 Cal. Stat.	Family Code
545.5	ch. 1136, § 5	6305 (added) (conditions for issuance of mutual order)
547.7	ch. 1136, § 6	3031 (added) (custody order not to be inconsistent with civil or criminal protective orders)
548	ch. 149, § 1	6345 (added) (duration of restraining order granted after notice and hearing)
1699	ch. 848, § 11	4853 (amended) (registration and enforcement of foreign support or assignment order)

Evidence Code	1992 Cal. Stat.	Family Code
621.1	ch. 849, § 2	20100-20104 (added) (paternity pilot projects)
895.5	ch. 851, § 3	7555 (amended) (rebuttable presumption of paternity)